

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

WP(C).No. 32604 of 2004(F)

**AGAINST THE ORDER DATED / / IN IN OS 238/1987 IN
EP.30/2000 of ADDL.MUNSIFF COURT,NEDUMANGAD**
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PETITIONER: JUDGMENT DEBTOR/DEFENDANT:

**JOSHUA JOHNSON, MELEVEEDU,
PARAYILKONAM, KAZHAUNAD MURI,
KARAKULAM VILLAGE, TRIVNADRUM.**

BY ADV. SRI.BIJU BALAKRISHNAN

RESPONDENTS:

- 1. SREEDHARAN PILLAI, S/O. GOVINDAN PILLAI
THADATHRIKATH PUTHENVEEDU, KAVUMPURATHU,
KAZHUNADU MURI, KARAKULAM VILLAGE (DIED).**
- 2. RUDRAYANI AMMA, THADATHARIKATHU
KAVUMPURATHU VEEDU, KARAKULAM,
VATTAPPARA VILLAGE, TRIVANDRUM.**
- 3. SANAL KUMAR, DO. DO.**
- 4. SANDHYA RANI, DO. DO.**

BY ADV. SRI.G.S.REGHUNATH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C) NO.32604/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE REPORT. DT.29.7.04 OF THE ADVOCATE COMMISSIONER.

**E.XT.P2:- COPY OF THE OBJECTION FILED BY THE PETITIONER AGAINST EXT.P1
COMMISSION REPORT DT.27.9.04.**

**E.XT.P3:- COPY OF THE ORDER DT.14.10.04 IN EP. NO.30/2000 IN OS. NO.238/1987 ON THE
FILE OF THE ADDL.MUNSIFF COURT, NEDUMANGAD.**

**E.XT.P4:- COPY OF THE ORDER DT.29.10.04 IN EP. NO.30/2000 IN OS. NO.238/1987 ON THE
FILE OF THE ADDL.MUNSIFF COURT, NEDUMANGAD.**

/TRUE COPY/

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M.SASIDHARAN NAMBIAR, J .

W.P.(C)NO.32604 OF 2004

DATED THIS THE 1st DAY OF JANUARY, 2007

JUDGMENT

Petitioner is the judgment debtor. Respondents are the decree holders. Petitioner is challenging Ext.P3 order passed by the executing Court whereunder it fixed the value of improvements due to judgment debtor at Rs.8,800/-. The trial Court granted a decree for redemption fixing the value of improvements at Rs.4,890/- and directed the decree holder to deposit the same along with the mortgage money of Rs.600/-. The appellate Court modified the decree, providing that the value of improvements is to be revalued at the execution stage. Executing Court appointed a Commission to fix the value of improvements. Commissioner submitted Ext.P1 report. Judgment debtor filed Ext.P2 objection to that report. Under Ext.P3 order, executing Court found that subsequent to the decree, as seen from Ext.P1 report fourteen new tapping rubber trees are in existence and petitioner is entitled to the value of improvements for them. Though commissioner fixed only a compensation of Rs.1,250/-, executing Court found that commissioner assessed the value computing the

income for ten years, instead of twenty times as provided under Section 7(1) of the Compensation for Tenants Improvements Act. The executing Court refixed the value of improvements for the said fourteen rubber trees at Rs.2,500/-. The executing Court also found that, as per Ext.P1 report there are 125 rubber trees, including fourteen yielding rubber trees stated earlier. The report submitted by Commissioner at the trial stage reveal that compensation was awarded for ninety slaughter rubber trees. Executing Court found that there is a difference of twenty one rubber trees. Ext.P1 report showed that the said rubber trees are slaughter rubber trees and Commissioner did not assess value of improvements of those trees. Executing Court fixed the value of improvements of Rs.1,000/- for the said trees. Apart from that, executing Court found that value of improvements assessed for the two existing coconut trees was low as it was on computation of ten years annual yield instead of twenty years annual yield as provided under Section 7(1) of the Compensation for Tenants Improvements Act. Executing Court enhanced the value accordingly. It was found that petitioner is entitled to a total value of improvements of Rs.8,800/-. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned Counsel appearing for Petitioner and respondents were heard.

3. Arguments of learned Counsel appearing for petitioner was that the yield taken for the fourteen yielding rubber trees was very low and executing Court should have calculated the value of improvements considering the yield for ten trees at one Kilogram per day. It was also argued that timber value of the slaughter rubber trees were not calculated as also the value of improvements for the spontaneous growths.

4. Learned Counsel appearing for decree holder pointed out that apart from filing objection, petitioner did not examine the commissioner and also did not let in any oral evidence to prove the yield and in such circumstances, there is no reason to interfere with Ext.P3 order.

5. Learned Counsel appearing for petitioner vehemently argued that yield of rubber trees assessed by commissioner is too low.

6. On hearing the arguments and on going through the order and the report of the Commissioner, it is clear that no evidence was adduced apart from filing the objection before the executing Court to prove that the yield assessed was not correct.

Hence it is not possible to interfere with the value of improvements awarded for the fourteen rubber trees under Ext.P3 order.

7. So also arguments of learned Counsel appearing for petitioner that the value of the timber trees of the ninety slaughter rubber trees, cannot be accepted as the value of the slaughter rubber trees were already assessed by Commissioner at the trial stage. But there is force in the arguments of learned Counsel appearing for petitioner that the value of improvements of Rs.1,000/- awarded for the twenty one slaughter rubber trees omitted to be assessed by the Commissioner was too low.

8. Learned counsel appearing for decree holder submitted that decree holder has no objection for the petitioner to remove the said twenty one slaughter rubber trees, before taking delivery. Learned Counsel appearing for petitioner also submitted that no compensation was awarded to the trees shown as items 17 to 25 of Ext.P1 report and petitioner may be permitted to remove them also before taking delivery. Learned Counsel appearing for decree holder submitted that the petitioner may remove the same.

9. Petitioner is therefore permitted to remove twenty one slaughter rubber trees as well as the trees mentioned as items 17 to 25 in Ext.P1 report before taking delivery. No other modification is

warranted in Ext.P3 order. Ext.P4 order shows that the decree holder has already deposited the amount as directed by the executing Court, under Ext.P3 order and delivery was also ordered. In such circumstances, this petition is disposed as follows:

Petitioner is permitted to remove twenty one slaughter rubber trees standing in the mortgaged property as well as the trees mentioned as items 17 to 25 in Ext.C1 report submitted by the Commissioner within three weeks from this day. But out of the amount deposited by the decree holder, petitioner is not entitled to Rs.1,000/- being the compensation for the twenty one slaughter rubber trees awarded by the executing Court. Executing Court is directed to deliver the property after three weeks from today permitting the judgment debtor to remove the trees as mentioned earlier before that date.

M.SASIDHARAN NAMBIAR, JUDGE

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